

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	
	:	
-v-	:	04cr1110 (DLC)
	:	
PRENKA IVEZAJ,	:	
	:	<u>MEMORANDUM OPINION</u>
Defendant.	:	<u>AND ORDER</u>
	:	
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DENISE COTE, District Judge:

Prenka Ivezaj has requested compassionate release under Title 18, United States Code, Section 3582(c)(1)(A). His request is denied.

Background

On June 16, 2006, after a fifteen-week jury trial, Ivezaj was found guilty of one count of racketeering in violation of 18 U.S.C. § 1962(c); one count of conspiracy to commit racketeering in violation of 18 U.S.C. § 1962(d); one count of illegal gambling conspiracy in violation of 18 U.S.C. § 371; one count of operation of an illegal gambling business in violation of 18 U.S.C. §§ 1955 and 2; two counts of extortion conspiracy in violation of 18 U.S.C. § 1951; one count of attempted extortion in violation of 18 U.S.C. §§ 1951 and 2; and one count of brandishing a firearm in furtherance of a crime of violence in violation of 18 U.S.C. §§ 924(c)(1)(A)(ii) and 2. Ivezaj was sentenced to a total of 264 months in prison: 180 months for the

racketeering and extortion convictions, to run concurrently with a 60-month sentence for the gambling convictions, and followed by a consecutive 84 month sentence for the firearm conviction. The Second Circuit Court of Appeals affirmed his conviction and sentence. See United States v. Ivezaj, 567 F.3d 88 (2d Cir. 2009); United States v. Ivezaj, 336 F. App'x 6 (2d Cir. 2009). He is currently incarcerated at the Fort Dix Federal Correctional Institution ("FCI Fort Dix").

Ivezaj first filed a habeas challenge to his conviction in 2011 pursuant to 28 U.S.C. § 2255, claiming that he had received ineffective assistance of counsel. The Court denied Ivezaj's motion after a hearing, and did not issue a certificate of appealability. Colotti v. United States, 2012 WL 1122972, at *1 (S.D.N.Y. Apr. 4, 2012); Colotti v. United States, 2011 WL 6778475, at *1 (S.D.N.Y. Dec. 21, 2011). Ivezaj then filed a second § 2255 petition in May of 2016, challenging the constitutionality of his conviction for brandishing a firearm. The petition was stayed for several years, pending appellate decisions on the constitutionality of the "residual" clause in 18 U.S.C. § 924(c)(3)(B). After the Supreme Court held that the clause was unconstitutionally vague in United States v. Davis, 139 S. Ct. 2319, 2336 (2019), the stay was lifted. The Court then denied Ivezaj's second petition on April 14, 2021, but granted a certificate of appealability. Rudaj v. United States,

529 F. Supp. 3d 290, 303 (S.D.N.Y. 2021). That decision is currently on appeal before the Second Circuit. Rudaj v. United States, No. 21-cv-937.

Ivezaj previously filed for compassionate release in December of 2020. That motion was denied. United States v. Ivezaj, No. 04-cr-1110, slip op. at 6 (S.D.N.Y. Dec. 18, 2020). The Government conceded in that motion that Ivezaj was suffering from a medical condition that, in combination with the COVID-19 pandemic, constituted an extraordinary and compelling circumstance. Id. at 5. After considering the sentencing factors under 18 U.S.C. § 3553(a), however, this Court denied the motion. Id. at 6.

Ivezaj filed the present motion for compassionate release on October 19, 2021. The Government was ordered to provide the Court with Ivezaj's medical records, which were filed under seal on December 7, 2021.

Discussion

A court may grant compassionate release to an inmate if the inmate has exhausted his administrative remedies by requesting compassionate release from his warden and there are "extraordinary and compelling reasons" warranting a reduced sentence. 18 U.S.C. § 3582(c)(1)(A)(i). District courts may "independently . . . determin[e] what reasons . . . are extraordinary and compelling" for the purpose of the

compassionate release determination. United States v. Brooker, 976 F.3d 228, 234 (2d Cir. 2020) (citation omitted). If a court concludes that the petitioner has presented "extraordinary and compelling reasons" for compassionate release, it must also weigh the 18 U.S.C. § 3553(a) sentencing factors before awarding compassionate release. Even if the court concludes that the petitioner has not presented the requisite extraordinary and compelling reason for compassionate release, the Second Circuit has recommended that the court should also assess if the § 3553(a) sentencing factors weigh in favor of granting compassionate release. United States v. Jones, 17 F.4th 371, 374-75 (2d Cir. 2021).

Ivezaj is not entitled to compassionate release because he has not presented an extraordinary and compelling circumstance for release. He cites as an extraordinary and compelling circumstance the heightened risk that he faces from COVID-19 as a result of his medical condition, and the allegedly inadequate measures that FCI Fort Dix has taken to mitigate COVID-19 transmission. Although Ivezaj's medical condition may previously have constituted an extraordinary and compelling circumstance favoring release, medical records received in connection with this motion indicate that Ivezaj's condition is now stable. Moreover, the Bureau of Prisons has also made COVID-19 vaccinations available to inmates and staff, further

reducing any risk related to COVID-19. See COVID-19 Vaccine Implementation, Bureau of Prisons, <https://bop.gov/coronavirus/> (last visited January 28, 2022). The risk of incarceration during the COVID-19 pandemic is now less likely as a general matter to qualify as an extraordinary and compelling circumstance, and does not for Ivezaj.

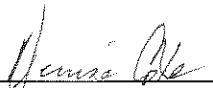
Even if Ivezaj had presented an extraordinary and compelling circumstance for compassionate release, the § 3553(a) sentencing factors would weigh against it. Ivezaj was convicted of very serious crimes, requiring a correspondingly serious sentence. Additionally, he committed these crimes as a member of the Rudaj Organization, an organized crime syndicate that controlled illegal gambling operations in New York City and Westchester County. Of particular importance during sentencing was the violent nature of the Rudaj Organization, and Ivezaj's role in perpetrating that violence. Ivezaj has not provided any reason why these factors should be evaluated differently than they were in his previous request, or in his original sentencing. Accordingly, it is hereby

ORDERED that Ivezaj's motion for compassionate release is denied.

IT IS FURTHER ORDERED that the Clerk of Court shall mail

Ivezaj a copy of this Order and note mailing on the docket.

Dated: New York, New York
January 28, 2022



DENISE COTE
United States District Judge